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ABSTRACT

This report to the United Nations (U.N.) Committee on the Rights of the Child contains observations of the World Organisation against Torture (OMCT) concerning the application of the Convention on the Rights of the Child by Burundi. The report is presented in seven parts. Part 1 outlines preliminary observations regarding Burundi's ratification of the Convention, noting that the government omitted important information in their report to the Committee on the Convention on the Rights of the Child. Part 2 presents general observations on the situation of children in Burundi, asserting that torture seems to be a systematic practice within the country, with evidence for violations of children's rights by rebel forces, the police and armed forces, and by family members. Part 3 of the report provides definitions of "child." Part 4 details protections against torture and other cruel, inhuman, or degrading treatment or punishment, including the definition of torture in international law and Burundi's legal framework. Part 5 concerns children in conflict with the law, presenting information on the age of penal responsibility, policy custody, and procedures related to the death penalty, life imprisonment, children's complaints, independence of the judiciary, validity of confessions obtained under torture, detention with adults, and medical examinations during detention. Part 6 of the report notes concern with ethnic tensions in Burundi between the Hutu and Tutsi, and describes refugee camp and regroupment sites. Following OMTC conclusions, the report presents a summary of observations and recommendations by the U.N. Committee on the Rights of the Child--Burundi, in the following areas: positive aspects, factors and difficulties impeding the implementation of the Convention, principal subjects of concern, and suggestions and recommendations. (KB)

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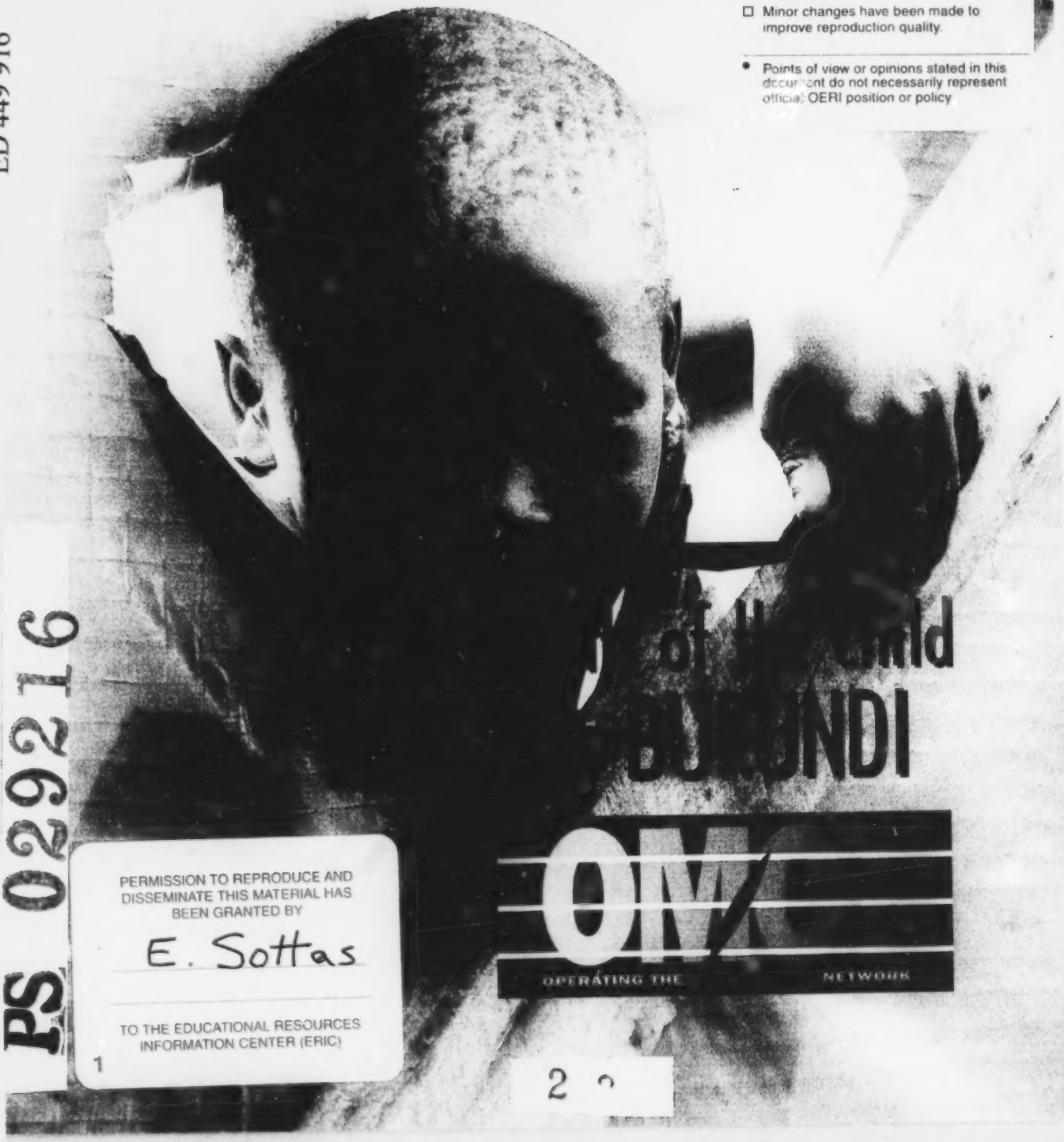

Rights of the Child in Burundi

OMCT

OPERATING THE SOS-TORTURE NETWORK

The aim of OMCT country reports is to prevent torture

In its reports on children's rights, OMCT aims to analyse national law in terms of the international commitments that a government has made. For example, in some countries families are not informed when their child is detained and this removes a precious safeguard against abuse. The absence of such safeguards facilitates situations where the torture of children can and does occur.

In other words, the reports aim to point out where, often unknowingly, legislation facilitates grave abuses against children.

The legal analysis is supported, where possible, by urgent appeals on the torture of children documented by OMCT. These urgent appeals (OMCT intervenes almost daily on such cases) are the foundation of all our work.

The reports are not legal semantics for their own sake, but represent, in addition to the urgent actions, another side of our strategy to end torture. The reports include meaningful and feasible recommendations for legal reform aimed at reducing the incidence of child torture.

The reports are presented to the United Nations Committee on the Rights of the Child who uses them to analyse how well a country is fulfilling its international commitments with regards to children. Its recommendations on the issue of torture, drawing from OMCT's reports, send a strong message from the international community on the need for action to end the torture of children.

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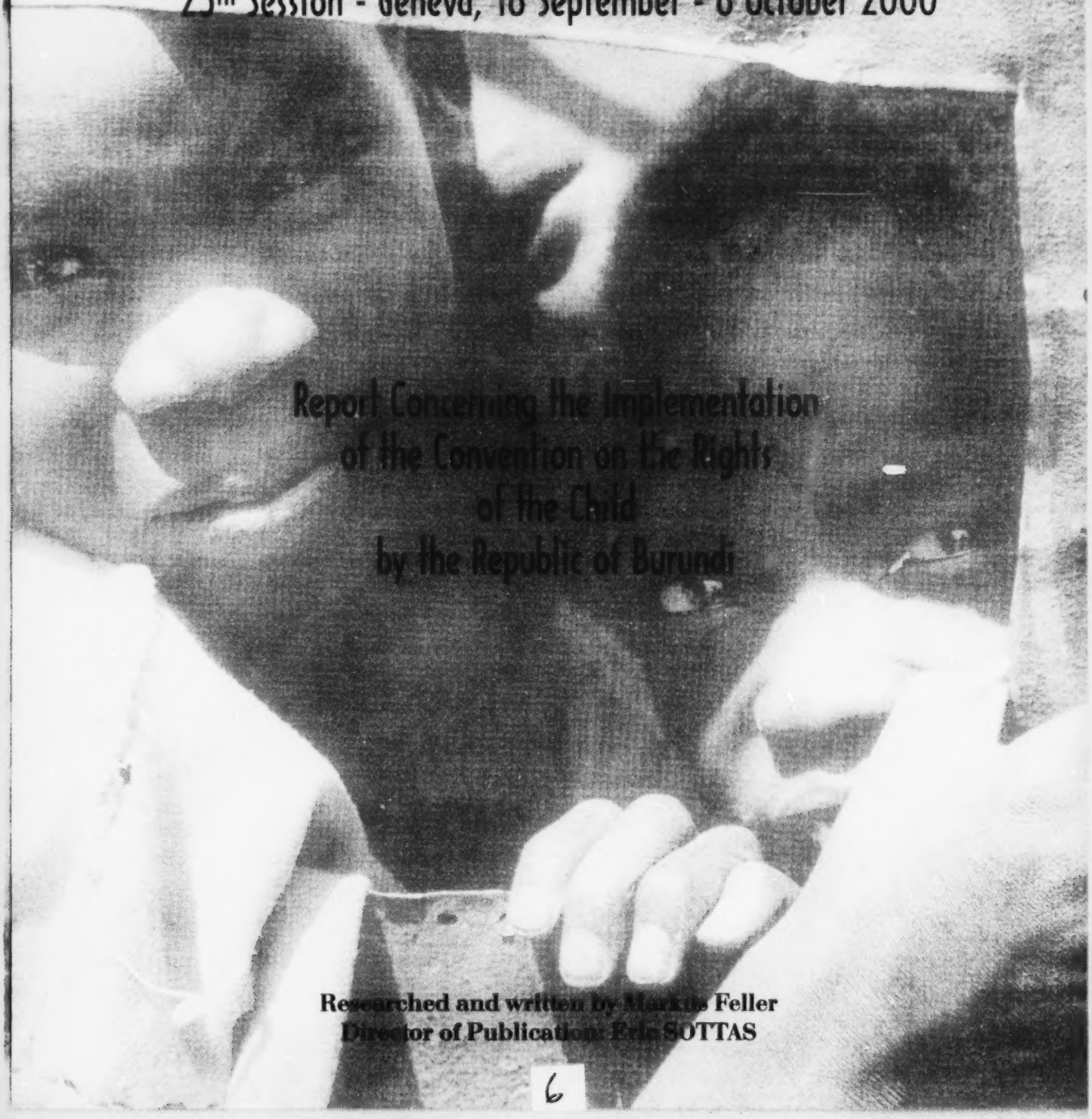
COMMITTEE ON THE RIGHTS OF THE CHILD
25th Session - Geneva, 18 September - 6 October 2000



Report Concerning the Implementation of the Convention on the Rights of the Child by the Republic of Burundi

Researched and written by Markus Feller
Director of Publication: Eric SOTTAS

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I. Preliminary Observations

Burundi ratified the Convention on the Rights of the Child (hereafter Convention) on October 19th 1990 which came into force on November 18th 1990. OMCT appreciates the fact that Burundi is submitting its Initial Report[1] to the Committee on the Convention on the Rights of the Child (hereafter Committee).[2] Burundi is also a party to other international instruments related to human rights condemning the practice of torture, in particular the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. OMCT welcomed Burundi's ratification of the African Charter on the Rights and the Welfare of the Child in November 1990.

Several obligations arise out of these treaties and OMCT recognises the will of Burundi to carry out these obligations.

However, OMCT notes that certain legislative and administrative measures and various laws in force are insufficient or represent an obstacle to the effective protection of the rights of the child, as provided for in the Convention. OMCT regrets to note that the authorities have omitted information of particular importance in their report, especially figures and cases in relation to a number of issues. For example, the statistics of tortured children and the penalties imposed on officials responsible for violations of children's rights, the right of appeal granted to children, the protection of children against torture and the impact of the armed conflict on children.

Since 1993, Burundi has suffered from a civil war which killed thousands of civilians - many of which were children. Both Government and Rebels are involving children directly in the ongoing acts of violence by using them as child soldiers.[3] This includes the "doria" (literally ear agent)[4] and other children simply helping the army with cooking or carrying equipment.

1 - CRC/C/3/Add.58; the original version of the report is in French.

2 - Art. 44 of the Convention.

3 - E/CN.4/1998/72; Special Rapporteur on Burundi, para. 68; Rapport rédigé par Défense des Enfants-International (DCI-Burundi), 2000, para. 47, 230 and 231; Human Rights Watch, Neglecting Justice in Making Peace, p. 6.

4 - According to the initial report, para. 231, doria are: "....young children under 15 years of age who look like school children and who roam around camps picking up information and passing it on to other people."

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The present Government under President Pierre Buyoya came to power through a coup d'état in 1996. Since 1999, the former President of South Africa, Nelson Mandela, has worked as a peace negotiator in order to help to restore peace in Burundi.

2. General Observations on the Situation of the Children in Burundi

Based on information received, OMCT is gravely concerned that torture seems to be a systematic practice in Burundi. Although the State is not the only perpetrator of violence against children in Burundi, it is responsible for ensuring that the rights stipulated in the Convention are implemented (art. 4 of the Convention). According to Art. 4 of the Convention, "States Parties shall undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present Convention." It should be emphasized that the Government has the obligation to exercise due diligence in the prevention, prosecution and punishment of all human rights violations at the hands of private perpetrators as well as public officials.

2.1 Domestic Violence

According to the 1999 annual report of the League Iteka just 11 cases of rape have been settled at the "tribunal de grand instance" of Bujumbura in 1999. Out of these 11 cases, six occured within a household and nine of the 11 victims were minors. Some of them were not older than 3 years old. Considering that victims of rape prefer not to go to the police because of cultural prejudices, it seems highly likely that there were many cases of rape that went unnoticed. OMCT is gravely concerned that girl-children are not safe at home. OMCT would recommend that the Burundian Government take measures to ensure that children, especially the girl-child, are sufficiently protected within the home in accordance with art. 19 of the Convention.

Mechanisms should be established to identify and prosecute perpetrators.

2.1 Societal Violence

UNICEF estimates that 4500 children are living abandoned in the streets of Burundi.[5] These children are at a high risk of being abused, forced into prostitution or child trafficking. OMCT would recommend that the Government ensure the protection, welfare and safety of these children and address their needs in accordance with art. 34 to 36 of the Convention.

OMCT has received reliable information concerning the existence of international adoptions of Burundian children where the children are exploited (sexually or for work or otherwise). OMCT appreciates that the Government has taken its first steps towards the protection of adopted children with the changes of the Code of Personal and Family Affairs of 30 April 1999.[6]

2.3 Violence by Rebels

OMCT is highly alarmed by reports on violations of children's rights commited by rebel forces in Burundi. For example:

- August 28th 1999: From 7pm till 11pm rebels attacked the block of Kinanira along de Kanyosha river, between the 12th and 15th avenue. 18 civilians were killed, one of them was a child.[7]

- October 20th to October 21st 1999: Rebels of the FNL killed 23 civilians in Busimba (community of Muramvya). 12 of the victims were women or children.[8]

- September 23rd 1999: Rebels attacked Cero colline in the commune of Mpinga-Kayove. "From the testimony of a 16-year-old girl wounded by a machete, it seems that she was probably raped: the attackers apparently forced her to lie on the ground and she lost consciousness after being hit in the face by a machete."[9]

- December 2nd 1998: camp of displaced people in Gihungwe: around 500 rebels attacked the camp and killed and burned

5 - UNICEF: Humanitarian response to Children; January - December 1999; Burundi; page 16; at www.unicef.org/cap/burundi.pdf

6 - Rapport annuel sur les droits de l'Homme - Edition 1999, Ligue ITEKA, p. 18-19.

7 - Ibid., p. 11.

8 - Ibid., p. 12.

9 - E/CN.4/2000/34; Special Rapporteur on Burundi, para. 84.

more than 130 people of whom 13 for sure were children.[10]

2.4 State

Various testimonies exist stating that the police and armed forces apply torture to children.[11] OMCT is deeply concerned by the attitude of government officials towards torture. The General Director of the Ministry of Human Rights[12], Mr. Aimé-Gaudence Kabuyenge, said allegedly on the occasion of a speech at ABDP[13] that: "It is true that our police forces are not sufficiently equipped to find out the truth without having to torture the guilty accused but sometimes in spite of the sensibilisation for Human Rights, one has to keep in mind, that Burundi is in a crisis and war situation where there is a tendance of some people to take a shortcut."[14] OMCT would like to draw attention to art. 2 section 2 of the Convention against Torture: "No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture." Mr. Kabuyenge added that, "Torture is in certain cases a practice that is tolerated by the Burundian society, when it returns justice, offering a supposed thief or a supposed assailant to the public prosecution."[15] In these statements, Mr. Kabuyenge defends torture and he even puts it so that it was the victims fault, that the police had to apply torture. This may also imply that torture is viewed as a cultural phenomenon. OMCT recommends the Goverment to train officials so that such honest statements as the ones of Mr. Kabuyenge will belong to the past.

10 - Ligue ITEKA: Bulletin d'Information, January 1999, p. 17.

11 - For example street children: "Yesterday, the police came to chase us away. They beat us sometimes, really hard." (www.rnw.nl/racism/burundi/html/testimonies.html); street children: CRC/C/3/Add. 58, para. 104; other incidents: Rapport Annuel sur les droits de l'Homme au Burundi - Edition 1999, Ligue ITEKA, p. 11; Ligue ITEKA, Bulletin d'Information, January 1999, p.15; Human Rights Watch: Neglecting Justice in Making Peace, April 2000, p. 5: "That same afternoon (January 25th 2000), soldiers killed at least twenty-six and perhaps as many as fifty-three people at Rubano, including elderly people, children and eight small babies."

12 - Directeur Général au Ministère des Droits de la Personne Humaine, des Réformes Institutionnelles et des Relations avec l'Assemblée Nationale.

13 - Association Burundaise pour la Défense des Droits des Prisonniers, Journée de Réflexion, June 2000, p. 13.

14 - Loc cit: Orig. French: "Il est vrai que nos corps de police ne sont pas suffisamment outillés pour établir la vérité de faits sans devoir torturer le prévenu coupable mais parfois malgré la sensibilisation sur les droits de l'homme, il faut garder à l'esprit que le Burundi est en situation de crise et de guerre d'où une tendance chez certains de prendre des raccourcis."

15 - Loc cit: Orig. French: "La torture dans certains cas c'est aussi une practice tolérée par la société burundaise lorsqu'elle se rend justice en offrant à la vindicte populaire un présumé voleur ou un présumé assaillant."

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2.5 Discrimination

OMCT believes that discrimination is one of the causes of torture. Art. 17 of the Transitional Constitutional Act (hereafter ACT)[16] theoretically forbids any kind of discrimination as well as art. 2 of the Convention. However, reality looks different.

In Burundi, the status of a girl-child is partly defined through customary law. This customary law is patriarchal. Often, the girl-child does not inherit[17] and is considered of less value than a boy.[18] The acceptation of these customs opens the door to abuse of the girl-child and violates the rights of the girl-child. OMCT acknowledges the fact that the new Code of Persons and Family[19] does not make any distinction between boys and girls besides the different age of marriage (18 for girls and 21 for boys; exceptions possible)[20]. As said above, Burundi signed the African Charter on Human Rights where the age of marriage is the same for both boys and girls (at 18 years). OMCT urges Burundi to ensure that its national legislation is coherent with the African Charter on Human Rights as the difference in marriage discriminates against girls.

OMCT is concerned about the gap between school enrolment ratios between girls and boys mainly concerning secondary schools and university level.[21] As it stands, current measures are insufficient to achieve equality[22] and as such, OMCT recommends that the Burundian Government increase its efforts to level out the different status of boys and girls. OMCT is gravely concerned by reports that there is a large number of HIV-Positive children in Burundi and that the Burundian Government has not mentioned their particular situation in its initial report. OMCT would like to know whether any measures have been adopted concerning the special needs of these children.

As a result of conflict, there is an increasing number of mutilated children in Burundi. OMCT welcomes that the Government, under the title of disabled children, also takes traumatized children into consideration (CRC/C/3/Add.58, para. 172).

16 - D-L no 1/008 of 6th June 1998; orig. in French: Acte Constitutionnel de Transition.

17 - CRC/C/3/Add.58; para. 136.

18 - See for example: E/CN.4/2000/34, Special Rapporteur on Burundi, para. 120.

19 - Code des Personnes et de la Famille, 1993.

20 - Art. 88 of the Code of Personal and Family Affairs.

21 - CRC/C/3/Add.58, para. 58; Rapport annuel sur les droits de l'Homme - Ligue ITEKA, Edition 1999, p. 18.

22 - Iteka Bulletin d'Information No 30, February 1998, p. 18.

OMCT deplores that mental health services are not available to all disabled children because of instability and because of the centralization of these services in Bujumbura.

OMCT notes with concern the large number of unaccompanied children in Burundi.[23] These children are namely unaccompanied because their parents are victims of the ongoing acts of violence, because their parents died of AIDS (UNICEF and Ligue Iteka estimate that there are 45.000 orphans because of AIDS in Burundi[24]) or simply because the parents lost their children during the political disturbances. Most of these children have also been subjected to violence themselves.[25] So far, the Government has taken no noticeable steps to improve the situation of these children. If these children find a place in a family, they are often seen as extra labour (CRC/C/3/Add.58, para.135). The Government deplores this kind of discrimination against boys because it seems to be easier for girls to find a foster family since girls can not inherit land and are therefore no danger to the own children of the foster family (CRC/C/3/Add.58, para. 136). In this regard OMCT would reiterate its recommendation that the Government should take care that girls and boys are treated equally.[26]

OMCT would suggest that the Welcome Families, or "Familles d'Acceuil", be governed by a legal structure.[27] When the rights and duties are clear, more families will be willing to take foster children.

According to UNICEF, a child with no legal father is discriminated against in Burundian society.[28] This is proving itself to be a considerable problem as there are more and more children with no father because of the instability in Burundi. OMCT recommends the Government to take the appropriate measures to improve the situation of these children.

23 - The Government gives in its report the number of 20'500 unaccompanied registered children for 1997. This is just the tip of the iceberg according to the report, CRC/C/3/Add.58, para. 62.

24 - Rapport annuel sur les droits de l'Homme - Edition 1999, Ligue ITEKA, p. 18.

25 - CRC/C/3/Add.58, para.172.

26 - See also: Rapport rédigé par Défense des Enfant-International (DCI-Burundi) suite au rapport initial soumis par le gouvernement du Burundi devant le comité des droits de l'Enfant, para. 136.

27 - The protection of children's rights in situation of armed conflict; UNICEF Experience in Burundi, 1999, p.11.

28 - The protection of children's rights in situation of armed conflict, UNICEF Experience in Burundi, 1999, p. 1.

3. Definition of the Child

Art. 1 of the Convention states: "For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier."

The Code of Personal and Family Affairs[29] (hereafter CPF) of Burundi states in Art. 335 that a person attains majority at the age of 21. Exceptions to this occur when a child is allowed to marry before the age of eighteen (Art. 88 CPF combined with Art. 354 CPF) or when the province court[30] decides that a minor of at least 16 years who is competent to judge should be emancipated (Art. 355 CPF). This legislation opens the door to distinctions that withdraw the protection of the Convention from certain children below the age of eighteen. It should be noted that when a minor gets married, he/she attains full majority including full penal responsibility which is usually at 18 years. OMCT welcomes the fact that Burundi has ratified the African Charter on the Rights and Welfare of the Child, which establishes the minimum age for marriage at 18 years for both boys and girls. The CPF of Burundi should correspond to the Charter and there should no longer be the institute of emancipation.

29 - Code des personnes et de la famille (March 1980).
30 - Tribunal de Province.

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4. Protection against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

4.1 Definition of Torture in International Law

The Committee has on several occasions pointed out that art. 37 of the Convention is connected to art. 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.[31] Art. 1 of the Convention against Torture defines torture as: "For the purpose of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. "

Furthermore, the Committee on the Rights of the Child, in its examination of State Parties' reports and in other comments, has indicated that it regards the United Nations rules and guidelines relating to juvenile justice as providing relevant detailed standards for the implementation of article 37.[32] These rules and guidelines are namely: the Beijing Rules[33], the Riyadh Guidelines[34] and the Rules for the Protection of Juveniles Deprived of their Liberty[35].

31 - See for example Norway IRCO, Add.23, para.15.

32 - See for example Report on the tenth session, October - November 1995, CRC/C/46, para. 214. Or see Report on the ninth session, May - June 1995, CRC/C/43, Annex VIII, p. 64.

33 - General Assembly resolution 40/33.

34 - General Assembly resolution 45/112.

35 - General Assembly resolution 45/113.

4.2 Burundi's Legal Frame

a) Torture

In Art. 22 of the ACT Burundi makes a clear statement against torture: "Nobody may be subjected to torture, to maltreatment or to cruel, inhuman or degrading treatment."[36] This Article appears to correspond with the duties that arise from Art. 37 and Art. 4 of the Convention. However, the Burundian Government does not specify in its initial report[37] a clear definition of torture within the Burundian law. Such a definition is neither found in the Burundian Penal Code. In the absence of a strict legal definition of torture and other offences, and in the absence of a precise description of appropriate and corresponding punishment for torture, it is impossible for courts to adhere to the principle of "nullum crimen, nulla poena sine lege" and to ensure that all acts of torture are offences under criminal law. OMCT would recommend that Burundi enact a law defining the crime of torture in terms of article 1 of the Convention against Torture.

Missing a clear definition, the only way to punish torture is through the articles about physical injuries (art. 141-158 of the Penal Code), the articles about sexual abuse (art. 382-387 of the Penal Code) or through art. 392 of the Penal Code. Article 392 states that: "Any arbitrary or prejudicial act against the liberties and rights that are granted in laws, decrees, orders and decisions to the individuals, ordered or committed by a functionary or public official, by a depositary or agent of authority or by the public forces, will be punished by 15 days to one year of imprisonment and by a fee of 1000 to 10'000Fbu (2-20$) or by just one of the two punishments."[38]

OMCT is concerned about the fact that these punishments are in no way appropriate for the committed violation that might have led to the death of the tortured person.

States Parties are responsible for making sure that any act of torture committed by a private person is prosecuted with due diligence (art. 4 of the Convention against Torture). However, the Burundian Penal Code is not able to meet the demands of art. 4 of the Convention. The expression "torture" can only be found in Art. 145 of

36 - Orig. in French: "Nul ne peut être soumis à la torture, ni à des sévices ou traitements cruels, inhumains ou dégradants."

37 - CRC/C/3/Add.58.

38 - Tout acte arbitraire et attentatoire aux libertés et aux droits garantis aux particuliers par les lois, décrets, ordonnances et arrêtés, ordonné ou exécuté par un fonctionnaire ou officier public, par un dépositaire ou agent de l'autorité ou de la force publique, sera puni d'une servitude pénale de quinze jours à un an et d'une amende de mille à dix mille francs ou d'une de ces peines seulement (art. 392 of the Penal Code).

the Penal Code. Killing is considered a qualified crime if the perpetrator applied torture before killing (art. 145 of the Penal Code). However, if the perpetrator injures the victim without killing him/her, there is no article, similar to art. 145 of the Penal Code, that would make the crime qualified.

Minors are specially protected against sexual abuse in Burundian law. The sentence is generally doubled if the crime is committed against a minor (see for example art. 383 of the Penal Code). Simply engaging in close genital contact[39] with a minor is considered rape and is punishable with imprisonment of 5 to 20 years (art. 385 of the Penal Code). The minimum punishment is doubled if the perpetrator is an ascendant, servant, teacher, superior or confidant of the victim. OMCT would recommend that the definition of torture be more explicit and in line with international treaties in particular art. 1 of the Convention against Torture.

b) Illegal Detention

Art. 27 section 2 of the Penal Procedure Code states that the officials of the General Prosecutor have to take the appropriate measures whenever they notice an illegal detention. The officials of the General Prosecutor have to start an "appropriate investigation" into the cases. This includes both disciplinary proceedings and punishment. Art. 57 section 3 of the Penal Procedure Code is clearer about what kind of punishment would be applied in case of an illegal detention. It refers to art. 171 of the Penal Code, which is kidnapping, and to art. 392 of the Penal Code which is arbitrary and wilful violation of rights, committed by an official. Nevertheless, despite the fact that arbitrary or illegal arrest and detention seem to be a current practice, the report makes no mention of these issues, nor of the number of children who are victims of such acts, nor of the sanctions applied to those responsible, nor the number of officials guilty of such acts. The Committee should urge the Government to produce informations about these issues and to make sure that the regulations provided for in the Penal Code and in the Penal Procedure Code do not just stay written in these codes but that they rather become reality.

39 - Art. 385 section 2 of the Penal Code: "....le seul fait du rapprochement charnel des sexes...."

c) Disciplinary Proceedings

Art. 27 section 3 of the Penal Procedure Code mentions that in case of illegal detention, besides punishment, also disciplinary measures can be applied. However, OMCT does not know one single case when an official received such a disciplinary measure. We have not either heard of any case of disciplination concerning torture besides the few cases of transferred soldiers which are discussed below. The Government fails to mention any case of disciplinary measure in its report. OMCT hopes that these measures are more numerous than those mentioned.

d) Remarks

OMCT has various reports of impunity.[40] For example, OMCT is concerned about repeatedly reported cases of rape committed by soldiers.[41] The only reaction of the responsible officials consisted usually in transferring the suspect to another post. Equally disturbing is the Burundian officials practice of threatening victims of torture with an accusation of rebellion if they do not withdraw their complaints.[42] This tradition of impunity has to stop in order to rebuild peace. OMCT is aware that the question of impunity is one of the most disputed problems in the ongoing Arusha process. The Government fails to mention in its report how incidents of torture are handled. Even though Burundi forbids torture and illegal detention of children, the Government does not seem to make enough efforts to enforce this legislation.

When tortured people are asked why they do not complain about what happened to them, they remark: "Complain? To whom?"[43]

40 - *Human Rights Watch, Emptying the Hills, Regroupment in Burundi; July 2000, p. 19; Rapport annuel sur les droits de l'Homme au Burundi - Edition 1999, Ligue ITEKA, p. 25-26; Association Burundaise pour la Défense des Droits des Prisonniers (ABDP), Journée de réflexion, June 2000, p. 35-37; The protection of children's rights in situations of armed conflict, UNICEF Experience in Burundi, 1999, p. 8.*

41 - *Human Rights Watch, Emptying the Hills, Regroupment in Burundi, July 2000, p. 19.*

42 - *Association Burundaise pour la Défense des Droits des Prisonniers (ABDP), Journée de Réflexion, June 2000, p. 36.*

43 - *Human Rights Watch, Emptying the Hills, Regroupment in Burundi, July 2000, p. 19.*

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5. Children in Conflict with the Law

OMCT welcomes the fact that Burundi is working on a law concerning the delinquent child.[44]

5.1 Age of Penal Responsability

Art. 14 of the Penal Code states that, the age of penal responsibility is at 13. A minor between 13 and 18 years can only be condemned to half the penalty that an adult can get (art. 16 of the Penal Code). Children cannot be condemned to either death penalty or life imprisonment (art. 16 of the Penal Code). Full penal responsibility starts with 18 years unless the person concerned has attained majority before the age of 18 (see above).

5.2 Police Custody

It is a fact that most cases of torture occur during police custody. OMCT believes that police custody of minors is no measure of last resort according to art. 37 (b) of the Convention and that therefore police custody should not exist for minors. Detainees are specially vulnerable during this period. Often, they are not able or allowed to tell anybody about their detention. According to art. 37 (c) of the Convention every child has to be able to stay in contact with his or her parents or friends also during detention. Nevertheless, there is information that secret detention still exists in Burundi.[45] For the first time in Burundian legislation the new Penal Procedure Code regulates this issue which is specially important for children. Art. 62 of the Penal Procedure Code states that the detainee has the right to inform anybody about his or her whereabouts. The detained person also has the right to communicate. This right is relativated by section 2 of art. 62 of the Penal Procedure Code. Section 2 states, that the responsible official can decide whether this right shall be granted or not. This is a carte blanche for the police officials to withdraw the right of communication from any detainee because there is no clear definition when an official is allowed to forbid communication and when not.

44 - Rapport annuel sur les droits de l'Homme au Burundi - Edition 1999, Ligue ITEKA, p. 19.
45 - Ibid., p. 14, p. 27.

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OMCT welcomes that in Burundian legislation the arrested people now have immediate access to a lawyer (art. 92 of the new Penal Procedure Code). However, it seems that often lawyers are only allowed to defend their clients at trial stage.[46] It should be noted, that most of the detainees in Burundian prisons are prisoners awaiting trials (73% on 31 January 2000)[47]. If one considers the fact that the accused stay in detention for years, even for secondary violations of the law, and that the mortality rate has been up to 15% per year in 1997 and 1998 in certain prisons this situation is even more disturbing.[48] Any such detention appears to be in fact a capital punishment. OMCT has information that some prisoners awaiting trials are forgotten by the officials.[49] To admit lawyers to the process right after detention would improve the situation considerably. OMCT hopes that this situation will change now with the new Penal Procedure Code.[50] OMCT welcomes the efforts of "Avocats sans frontières" to put lawyers at the disposal of detainees.

OMCT finds that the period for police custody of seven days (art. 60 of the Penal Procedure Code) is too long. This period can even be extended up to 14 days by the Public Minister (ibid.). This situation appears all the more disturbing if one considers, that the police often has no fuel to bring the accused to court and therefore the period of seven days is exceeded. However, the report does not mention how long police custody usually is and in how many cases the arrested person had to stay in police custody longer than seven days. OMCT welcomes that the Public Prosecutor regularly visits detainees who are under police custody and that he immediately sets them free if the police did not respect the law.

OMCT recommends that the Burundian Government make regular and unexpected examinations of police stations in order to prevent such incidents. Furthermore, it is desirable that NGOs are granted wide access to police stations, brigade cells, etc. All the police stations should make up-to-date reports on who they are holding as prisoner in the station and for how long.

46 - Rapport annuel sur les droits de l'Homme - Edition 1999, Ligue ITEKA, p. 21; Fewer, Background Report, International Alert, Justice in Burundi, 1999, p. 2.

47 - Ressource: Direction générale des Affaires pénitentiaires du Burundi; in: Rapport annuel sur les droits de l'Homme - Edition 1999, Ligue ITEKA, p. 29.

48 - Rapport annuel sur les droits de l'Homme - Edition 1999, Ligue ITEKA, p. 27. In 1999, the situation got a lot better mainly because of the efforts of NGOs and the ICRC.

49 - Eventhough this is forbidden, of course. If we look at art. 75 section 4 of the Penal Procedure Code we can see, that the Government seems to be aware of the problem. The Penal Procedure Code is in force since 1st January 2000.

50 - Art. 92-96 of the Penal Procedure Code.

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The report fails to include information on children's deprivation of liberty as a measure of last resort and for the shortest appropriate period of time (art. 37 of the Convention).

5.3 Procedure

a) Death Penalty and Life Imprisonment

Art. 37 of the Convention states that both death penalty and life imprisonment are considered as torture for children. Art. 16 of the Penal Code follows the Convention and forbids the application of the death penalty and life imprisonment for children.

b) Effectiveness of Complaints

OMCT believes that the procedural restrictions that withdraw a certain right from a child can lead to torture. For example, officials often do not pay enough attention to the complaints of children. OMCT welcomes that the new Burundian Code of Penal Procedure (CPP)[51] states in art. 13 that officials have to forward complaints of detainees immediately to the General Prosecutor. However, OMCT has reliable information that judges often do not listen to detainees when they complain or state that they have been forced to confess by torture.[52] We recommend the Burundian Government to ensure compliance with the new Code of Penal Procedure.

In fact, torture is an offence for which proceedings are brought directly by the public prosecutor's department. A prompt and inpartial investigation into any substantial allegation of torture should be ensured (art. 12 of the Convention against Torture).

OMCT regrets that the report fails to mention the opportunities to appeal available to children who are victims of torture or cruel, inhuman or degrading forms of treatment, from an official or agent of the State.

OMCT is concerned by the doubling of court fees in 1999. This is mainly disturbing because Burundi has no system of free legal advice for poor people. Since children usually do not have much money, it is very difficult for them to appeal an unjust verdict.

44 - Loi N° 1/015 du 20 Juillet 1999 portant Réforme du Code de Procédure Pénale.

52 - Association Burundaise pour la Défense des Droits des Prisonniers (ABDP), Journée de Reflexion, June 2000, p. 34.

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c) Independence of the Judiciary

OMCT welcomes the proposal for a new law concerning the reformation of the status of Judges.[53] OMCT hopes that the planned independence of the Judges from the Government becomes reality. This independence is urgently needed within the Burundian jurisdiction. Many people believe, that "justice is meted out on ethnic grounds, rather than on the objective merits of the case."[54]

d) Validity of Confessions obtained under Torture

Art. 27 of the Penal Procedure Code makes clear, that confessions obtained under torture are invalid. Nevertheless, OMCT is concerned that judges apparently brush aside complaints about torture referring to a lack of evidence of the torture.[55] Often, a lack of evidence exists as there is no regular medical examination during detention that could report such incidents.[56]

e) Children's Courts and Procedure

There are neither Children's Courts nor Children's Procedures in Burundi.[57] The Government states in its report[58] that, before the conflict, a Juvenile Bureau existed but that this Bureau does not exist anymore. This situation is all the more disturbing considering that the Government admits in its report that "neither the police nor the courts have particular experience of dealing with cases of children in conflict with the law. The authorities do not appear to pay much attention to delinquency, except in certain cases."[59]

f) Detention with Adults

Art. 37 of the Convention states, that children have to be separated from adults during detention unless it is in the best interest of the child not to do so. In Burundi, children are not separated from adults[60] which is a plain violation of the Convention. OMCT welcomes the fact that the Government seems to have realised that

53 - *Rapport annuel sur les droits de l'homme - Edition 1999; Ligue ITEKA, p. 22.*

54 - *Fewer, Background Report, International Alert: Justice in Burundi, p. 4.*

55 - *Association Burundaise pour la Défense des Droits des Prisonniers (ABDP), Journée de Réflexion, June 2000, p. 34.*

56 - *See below.*

57 - *CRC/C/3/Add.58, para. 244.*

58 - *CRC/C/3/Add.58, para. 245.*

59 - *CRC/C/3/Add.58, para. 236.*

60 - *CRC/C/3/Add.58, para. 69, para. 105; E/CN.4/2000/34, Special Rapporteur on Burundi, para. 114.*

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there is a problem. At least, we have information that since this year, in Mpimba, there is a section of the prison now reserved for minors.[61]

g) Lack of Administration

OMCT deplores that, because of the shortage of prisons, many detainees are held in police stations and gendarmerie and brigade cells. These detainees seem not to appear on any list. The Government fails to produce reliable information about how numerous these detainees are. OMCT fears that many children are held in such detention.

5.4 Medical Examination during Detention

A system of medical examination, as a regular procedure during police custody, does not exist in Burundi. This would help to prevent and abolish torture in police custody, where torture mainly occurs. The Committee should urge the authorities to ensure that any child placed in police custody is given a medical examination immediately upon arrival at the place of detention and that this request be included in the appropriate file. The authorities should also be urged to ensure, that a medical examination is not only performed at the sole request of the person concerned.

OMCT is concerned that there is either no medical examination as a regular procedure during detention and that the medical departments in Burundian prisons are in deplorable conditions.

61 - Fewer, Background Report, International Alert, Justice in Burundi, p. 7; confirmed by DCI-Burundi.

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6. Ethnicity (refugee camps/ regroupment sites)

6.1 Hutu/Tutsi

OMCT is concerned that the Government in its report does not mention the various problems that arise from the ethnic tensions in Burundi. Under paragraphs 254-255 (Children from minorities or indigenous groups) of the report, it is noted that: "Unusually for Africa, Burundi's population is characterized by cultural and linguistic homogeneity." OMCT believes, that tabooing a problem does not make it smaller.

OMCT is specially concerned about the changing attitude in the ongoing war towards children. The new attitude is strikingly summarized as: "If you do not want big rats, you have to kill the little rats!"[62]

6.2 Refugee Camps and Regroupment Sites

OMCT is pleased that the Government finally abolished its policy of forcing the population into regroupment sites. These regroupments were always stressful for the regrouped population. Children mainly suffered from this instability. Besides this, Human Rights Watch lists 9 pages of abuses committed by the military taking advantage of the power that they have in these camps.[63] These abuses include reprisal, killing, beating, rape, forced labour and looting.

OMCT requests the Government to investigate these incidents thoroughly.

OMCT recommends the Committee to ask for information about these regroupment sites, particularly concerning incidents which happened when they were created.

OMCT urges the Government to follow the Guiding Principles on Internal Displacement, adopted in September 1998 by the UN General Assembly.

OMCT hopes that the refugees, who are still in Tanzanian camps, will soon have the possibility to go back safely to their country.

62 - CRC/C/3/Add.58, para.66.

63 - Human Rights Watch, Emptying the Hills, Regroupment in Burundi, July 2000, p. 14-23. See also: E/CN.4/2000/34, Special Rapporteur, para. 135.

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7. Conclusions and Recommendations

The International Secretariat of OMCT/ SOS-Torture wishes to express its concern over the existing tension in Burundi and the consequences it may have for the full respect of the rights of the population concerned and particularly those of children.

OMCT deplores that the rights of the child are systematically violated in Burundi. These violations come from different sides, the state being one of the main violators.

OMCT is concerned about the current culture of violence in Burundi, particularly affecting the safety of children as one of the most vulnerable group in the society. OMCT would request the Government to strengthen its efforts in order to stop the ongoing violences.

OMCT would request the authorities to produce further information concerning impunity and children as victims of ethnic conflicts.

OMCT would urge the Government to no longer accept children in the army - even in minor positions such as the "doria".

OMCT would recommend the Government to implement the new Penal Procedure Code and to make the current laws available (e.g. a Penal Code that contains the changes since 1981). This includes the translation of certain legislation into Kirundi (namely the Convention).

The Government should commit itself to adopt a precise definition of torture conforming to art. 1 of the Convention against torture, considering the child's situation and his/her interest.

OMCT would recommend the Government to make regular and unexpected examinations of police stations and to grant NGOs free access to Burundian prisons.

The Committee should urge the Government to train the officials who are dealing with children (judges, police officers, administration staff, etc.)

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OMCT would recommend the Government to install an effective medical examination for children both in prisons and in police custody.

OMCT would recommend to allocate a more substantial part of the national budget to the police and judiciary so that these bodies can work without violating any human rights, including torture. Because of the lack of means, it is sometimes hard for these bodies to omit human rights violations. For example, the separate detention of children from adults can not always be heeded, in violation of art. 37 (c) of the Convention.

Finally, OMCT would insist on the need to implement all provisions of the Convention on the Rights of the Child, the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as they are the most relevant international instruments concerned with all forms of violence against children.

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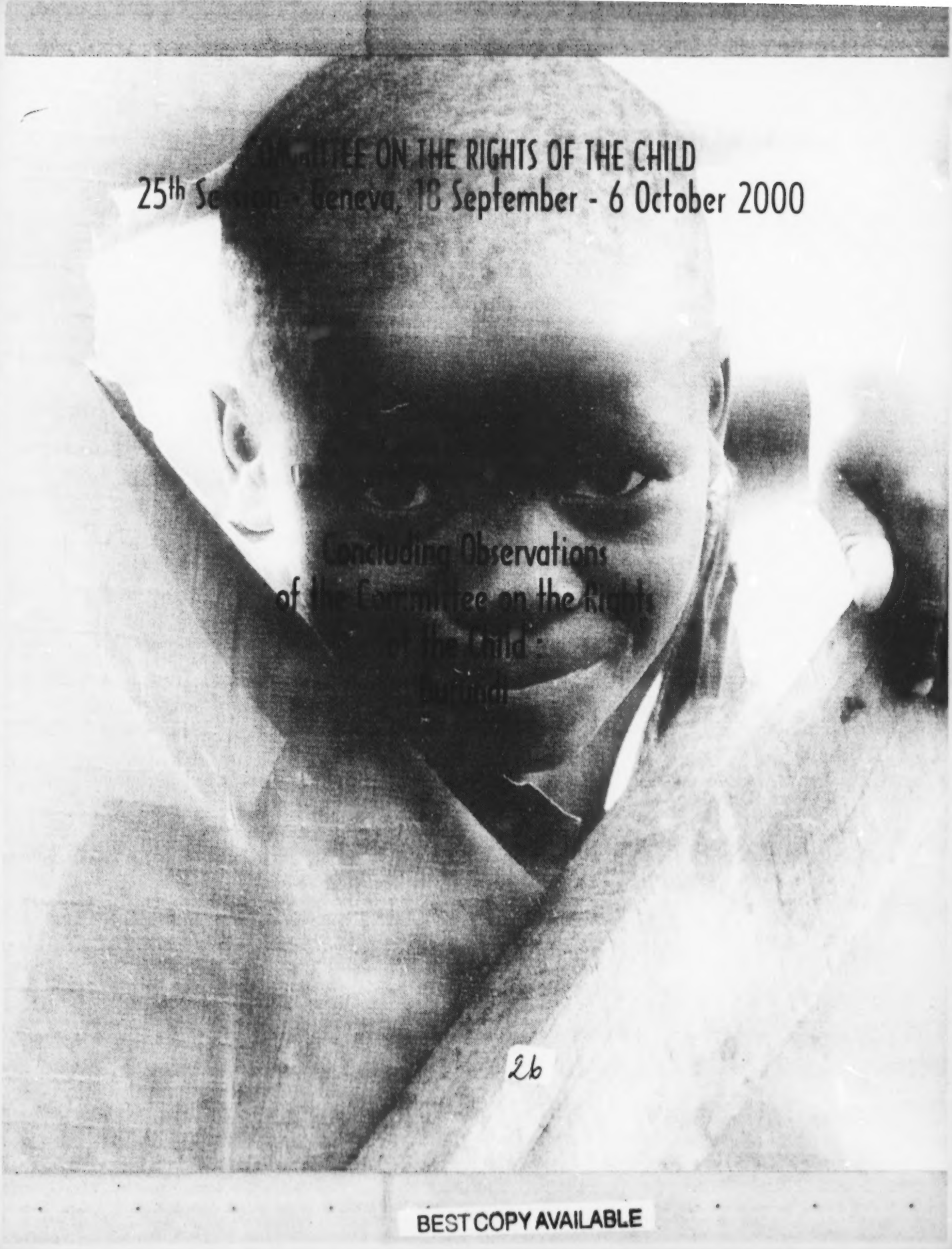
ON THE RIGHTS OF THE CHILD
25th Session - Geneva, 18 September - 6 October 2000
Concluding Observations
of the Committee on the Rights
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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 44 OF THE CONVENTION

Concluding Observations of the Committee on the Rights of the Child: Burundi

1. The Committee considered the initial report of Burundi on (CRC/C/3/Add.58) at its 645th to 646th meetings (see CRC/C/SR. 645-646), held on 20 September 2000, and adopted at the 669th meeting, held on 6 October 2000, the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the State party's initial report and the written replies to its list of issues (CRC/C/Q/BUR/1). The Committee notes the constructive dialogue it had with the delegation of the State party.

B. Positive aspects

3. The Committee notes the State party's efforts to introduce "education for peace" and "let us build peace" projects into national schools curricula and teacher training. The Committee notes also the State party's efforts to provide unaccompanied children with adequate assistance and to help them tracing their families.

4. The Committee notes with satisfaction the State party's ratification of ILO Convention 138 concerning the minimum age for the admission to employment and the African Charter on the rights and welfare of the child.

C. Factors and difficulties impeding the implementation of the Convention

5. The Committee notes that peace negotiations have failed many times in the past

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and, while expressing hope that current efforts will be successful, notes that negotiations will need some time to take effect and that the armed conflict and its many repercussions on the respect for children's rights continue to cause serious human rights violations in the State party.

6. The Committee notes that, since ratification of the Convention, there has been a serious deterioration in socio-economic conditions in the State party, aggravated by the armed conflict.

7. The Committee notes also the regional sanctions imposed on the State party until 1999, and the negative impact of the sanctions on the situation of children in the State Party.

D. Principal subjects of concern, suggestions and recommendations

D1. General Measures of Implementation (arts. 49, 42 and 44, paragraph 6 of the Convention)

Legislation

8. The committee notes the efforts being made by the State party to bring domestic legislation into conformity with the Convention including through proposals to adopt a new law on adoption, the draft proposal on children in difficult circumstances and on the rights of delinquent children to be considered by the National Assembly at its October 2000 session. The Committee remains concerned, however, that plans to adopt a single legal instrument gathering together all provisions relative to the rights and duties of children have not been completed, that not all elements of domestic legislation are in conformity with the provisions of the Convention and that customary law and traditional practices involving, *inter alia*, inheritance violate the rights of children, and of girls in particular.

9. The Committee encourages the State Party to continue its efforts in the area of law reform with a view to ensuring full conformity with the principles and provisions of the Convention, to pursue early adoption of the code of laws on the rights and duties of children and to ensure that customary law and traditional practices are in full respect of the provisions of the Convention. The Committee further recommends that the State Party make additional efforts to ensure implementation of legislation.

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National plan of action and child rights policy

10. Noting the progress made towards the establishment at the provincial and communal level of children's rights committees, the Committee remains concerned at the lack of a comprehensive children's rights policy in the State party, by the absence of policy making mechanisms which systematically take children's rights into consideration and by the absence of an up-to-date national plan of action for the implementation of children's rights policy in priority areas. The Committee is concerned, in addition, that children's rights have not be sufficiently taken into consideration in past efforts to achieve peace in the State party.

11. The Committee recommends that a children's rights policy and a new national plan of action based upon the principles and provisions of the Convention be established and implemented in consultation and co-ordination with all relevant ministries and with civil society. The Committee recommends that the State party pursue efforts to establish provincial and communal child rights committees and that these bodies be used to effectively implement children's rights policy and programmes related to the national plan of action at the local level. The Committee recommends that the State party seek assistance from UNICEF in this regard. The Committee urges, further, that the protection of child rights, and the implementation of programmes to address priority child rights concerns, be included in peace agreements.

Co-ordination

12. The Committee notes the State party's efforts to co-ordinate implementation of the Convention through the Council of Ministers, the Ministry with responsibility for human rights and the inter-ministerial follow-up Committee. The Committee remains concerned, however, that co-ordination efforts remain insufficient with regard to the promotion and implementation of the Convention and the involvement of NGOs in the process.

13. The Committee recommends that the State party review its co-ordinating mechanisms to facilitate the promotion and implementation of the Convention, and to ensure that adequate human and financial resources are allocated for this purpose. Further, the Committee recommends that

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appropriate measures be taken to include NGOs in the co-ordination process.

Data collection

14. The Committee notes with concern the breakdown of adequate data collection mechanisms and that where data is collected this information only covers children up to age 15.

15. The Committee recommends that the State party take steps to improve the collection of disaggregated data, including for children up to age 18, on priority areas of concern within the scope of the Convention and to ensure that this information is used to improve implementation of child rights policy.

Monitoring mechanisms

16. The Committee is concerned that there is no mechanism through which monitoring of the Convention's implementation and the reporting of complaints of children's rights violations can be made.

17. The Committee recommends the establishment of an independent mechanism to monitor implementation of the Convention and record and report upon violations of children's rights.

Available resources/budgetary allocations

18. In light of article 4 of the Convention, the Committee is deeply concerned at the low proportion of the national budget invested in health, education and social welfare, in contrast with the World Bank guidelines on minimum spending on these areas and the high proportion of spending on defence. The Committee is also concerned that the use of resources, whether from State allocations or from direct international assistance, is not distributed evenly among the population within the State party and according to needs. Further, the Committee notes the high proposition of the population living in poverty and is concerned at the impact of this situation on children.

19. In light of articles 2, 3 and 4 of the Convention, the Committee recommends that the State Party raise the proportion of spending on health, education and social welfare, to the maximum available resources, with a view to ensuring access to

these services for all children. The Committee recommends, in addition, that the State party ensure that resources are distributed as evenly as possible according to the needs of vulnerable populations and according to geographical areas. The Committee recommends, further, that the State party, make every effort to ensure the continued sustenance of programmes and services for the implementation of the Convention.

Involvement of civil society

20. The Committee is concerned that civil society, including NGOs, have insufficient opportunities to influence policy making and implementation with regard to children's rights. The Committee is concerned, further, that children do not have sufficient opportunities to participate in this process.

21. The Committee recommends that the State party take steps to involve a wide range of NGOs in child rights policy making and implementation including, in particular, at the provincial and communal levels. The Committee recommends, further, that children be provided with more opportunities to participate in the work of NGOs.

Training

22. Recognising the efforts made by the State party to promote the Convention and to provide training on its provisions for civil servants, the Committee is concerned that training on practical application of the Convention, particularly in the context of the developing network of provincial and communal child rights committees, remains insufficient.

23. The Committee recommends that the State party continue and strengthen its efforts to promote the Convention and to conduct training on its provisions for particular professional groups including, *inter alia* teachers, health professionals including psychological care specialists, social workers, law enforcement officials, provincial and communal administrative officials, the members of provincial child rights committees and national ministerial officials with responsibility for children's rights and the military. The Committee recommends, further, that the State Party seek assistance in this regard from UNICEF.

D2. Definition of the child (article 1 of the Convention)

24. The Committee is concerned by the low minimum age of 12 at which formal education is no longer compulsory and joins with the State party in expressing concern at differences between the legal minimum age for the marriage of girls and boys and at the minimum age of recruitment to the armed forces.

25. The Committee recommends that the State party raise the age until which children are legally obliged to receive a formal education and consider linking the new age limit with the current minimum limit at which children are legally permitted to work, that of 16. Recognising the State party's practice the Committee recommends, further, that the State party pursue its efforts to harmonise the minimum age of marriage for girls and boys and that legislative measures be taken to raise the minimum age of recruitment to the armed forces to 18.

D3. General principles (Arts. 2, 3, 6 and 12 of the Convention)

Non-discrimination

26. The Committee is deeply concerned at gross violations of the right to non-discrimination and at the impact of discrimination upon children in the State party, and notes that discrimination takes different forms including, by ethnic origin, gender, geographical origin (within the country) and social status. The Committee notes that killings and other acts committed in the armed conflict, and which have affected children, have frequently been perpetrated on the basis of ethnic origin. The Committee notes, in addition, that other forms of discrimination lead to concerns with regard to, *inter alia*, access to resources, property inheritance, rights to nationality and the access of girls to education. Further, the Committee is concerned that the State party does not appear to have taken fully into account either the provisions of article 2 or those regarding the Convention's other principles in the context of legislation and administrative and judicial practice as well as in programmes on behalf of children.

27. The Committee urges the State party to make every effort to end all discriminatory practices, to ensure the equal respect of the rights of all children in the State party and to reinforce and ensure the implementation of existing laws related to non-discrimination. The Committee recommends that the State party engage the research and publication of an independent study on the different types and causes of discrimination which affect children in the State party, with the aim of contributing to public discussion and the identification of solutions. The Committee urges the State party to restate its commitment to non-discrimination against children and to work with national and international partners to end discrimination. The Committee further urges the State party to use child rights promotion and training as a means of ending discrimination, along with the prosecution of persons who violate non-discrimination provisions under law.

Best Interests

28. The Committee is deeply concerned that the State party has not given the best interests of the child, as an individual or as the member of a vulnerable group, priority consideration.

29. The Committee recommends that efforts to protect the best interests of the child, both as an individual and as member of vulnerable groups, be integrated into all future legal revisions and be given due consideration in the context of administrative and judicial decisions.

Right to life, survival and development

30. The Committee is deeply concerned at the extensive violations of the right to life among children through, *inter alia* armed conflict, deliberate killings by armed persons including members of the armed forces, State regroupment policies, other forms of population displacement, poor health and sanitation facilities, severe malnutrition and related illnesses and as a result of prevailing conflict between groups of the population.

31. The Committee strongly urges the State party to make every effort to reinforce protection of the right to life, survival and development of all children within the State party through policies, programmes and services that target and guarantee protection of this right. The Committee further urges the State party to seek as much international assistance as possible in this regard.

The right of the child to be heard

32. The Committee is concerned that children are not given enough opportunities to express their views and that their opinions are not taken into consideration sufficiently, in particular, within the family and in schools.

33. In the light of article 12 of the Convention, the Committee recommends that the State party provide educational information to, *inter alia*, parents, teachers, government administrative officials, the judiciary and the public in general on children's rights to participate and to have their views taken into consideration.

D4. Civil rights and freedoms (arts. 7, 8, 13-17 and 37 (a))

Nationality

34. The Committee notes that the State party has ratified the 1954 Convention relating to the status of stateless persons, but remains concerned at the absence of legislation to implement the Convention's provisions, as they may affect children.

35. The Committee recommends that the State party consider the adoption and implementation of legislation to implement the 1954 Convention.

Birth registration

36. The Committee is very concerned by the high numbers of children whose birth is not being registered.

37. In the light of article 7 of the Convention, the Committee urges the State party to make every effort to ensure complete birth registration, taking into account the particular situation of internally displaced persons, including those who have been regrouped, and refugees.

Cruel, Inhuman and degrading treatment or punishment

38. The Committee is deeply concerned by severe violations of the rights to freedom, to freedom of movement and to choose one's residence in the context of the State partys regroupment policy. The Committee is concerned, further, by the high number of children in regroupment camps and the

extremely poor conditions in which they have to live constituting, in many cases, cruel, inhuman and degrading treatment, and violating numerous children's rights minimum standards.

39. The Committee urges the State party to complete, without further delay, the process of closing the regroupment camp and, pending closure, to guarantee respect of all civil rights and freedoms of children and their families living in such camps.

Corporal punishment

40. The Committee is concerned that corporal punishment continues to be practised at home and in some schools and that domestic legislation does not prohibit its use.

41. The Committee recommends that the State Party take all appropriate measures including, *inter alia*, through the development of legislative measures, information campaigns and the promotion of alternative forms of sanctions which respect the physical and mental integrity of children to end the practice of corporal punishment within the family, schools, juvenile justice and alternative care.

The protection of the law

42. The Committee is concerned that violations of human rights, including in particular the killing of civilians, committed against children or their parents are only rarely addressed through judicial processes and that this climate of impunity is detrimental to the overall respect of children's rights.

43. The Committee recommends that the State party make much greater efforts to investigate violations of human rights, to conduct criminal justice prosecutions of the perpetrators of these acts.

Access to information

44. The Committee notes with concern that a majority of children in rural areas do not have adequate access to information.

45. In light of article 17, the Committee recommends that the State party take all appropriate measures te ensure that children in all rural areas are provided with adequate access to information and that they are also protected from information which may be harmful to them.

D5. Family environment and alternative care (arts. 5, 18 (pares. 1-2), 9-11, 19-21, 25, 27 (para. 4), and 39)

Family support

46. The Committee is deeply concerned by the breakdown in nuclear family structures, by the emergence of a high proportion of single parent headed households, child headed households and grandparent headed households in the State party and by the immediate and long-term, consequences that these weaknesses in the family structure may have on children. The Committee is also concerned by the strong bias in favour of fathers in the context of child custody disputes.

47. Noting the efforts already made in this regard, the Committee urges the State party to continue and strengthen support to families including, *inter alia*, through assistance with agricultural production, legal and financial assistance in obtaining adequate housing and land and counselling to help resolve problems. The Committee urges the State party to give particular attention to the establishment of psycho-social and parental guidance programmes to strengthen vulnerable family units such as single-parent, child and grandparent headed households. The Committee recommends, in addition, that the State Party ensure that granting of child custody to one parent is made on in accordance with the best interests of the child, with the child's participation and with consideration of the emotional needs of the child.

Child abuse and neglect

48. The Committee joins the State party in expressing concern at acts of cruelty, ill-treatment, abuse including sexual abuse and neglect and practices such as the seizure of property belonging to orphans, committed against children in the context of the family, including the extended family.

49. In light of article 19, the Committee recommends that the State party take steps to establish effective mechanisms for timely reporting and response to domestic violence and abuse against or affecting children, to prosecute individuals who violate criminal law and to protect children from cruelty and other acts, such as the seizure of property from orphaned children. The Committee recommends, further, that the State party take measures to offer both physical and

psychological care to those who have suffered, including assisting child victims through court and other proceedings and avoiding the risk of a secondary victimisation, and that those should be implemented in accordance with article 39 of the Convention.

Alternative care

50. Recognising the large numbers of orphans and other children in need of alternative care in the State party, the Committee is deeply concerned by child rights violations that occur in the context of alternative care practices, by the lack of systematic monitoring of the situation of children in institutions or informal foster families, by the use of children for labour in some informal foster families and by reports indicating that many of those children do not benefit from adequate emotional support or access to health and education services.

51. In light of article 21 of the Convention, the Committee recommends that the State party urgently develop, and implement, mechanisms to ensure the provision of suitable alternative care for children in need of such assistance and that monitoring mechanisms be used to guarantee a minimum standard of care, including in the long-term, and which ensure that such children are not used for labour and have access to education and health services. The Committee recommends, further, the establishment of a code of standards to ensure adequate care and protection of children deprived of a family environment. Recognising the difficulties encountered by many families that provide alternative care for children, the Committee recommends that the State party continue and strengthen its support to such families including, *inter alia*, through the provision of assistance with the costs of health and education services.

D6. Basic health and welfare (arts. 6, 18-para. 3, 23, 24, 26, 27, paras 1-3)

Children with disabilities

52. Noting the current efforts by the State party, the Committee is concerned by the situation of children with physical and mental disabilities, and in particular by the limited specialised health care, education and employment possibilities available for them. The Committee is concerned, further, that poor health conditions and poverty are

leading to an increase in the numbers of children with disabilities.

53. The Committee recommends that the State party review the situation of children with disabilities in terms of their access to suitable health care, education services and employment opportunities and that the State party establish a programme of action to address all areas of concern. The Committee recommends, in addition, that the State party take note of the Standard Rules on the Equalization of Opportunities for Persons with Disabilities (General Assembly Resolution 48/96) and the Committee's recommendations adopted at its General Day of Discussion on "The Rights of Children with Disabilities" (CRC/C/69). The Committee further recommends that the State party sensitize the population to the rights of children with disabilities and the difficulties they must face in their daily lives. The Committee also suggests that the State party seek assistance from, *inter alia*, UNICEF and WHO.

Poor health and access to primary health care

54. The Committee is deeply concerned by low immunisation rate, high levels of malnutrition and micro-nutrition deficiencies and by extremely poor health conditions among children in general and particularly in camps. Further, the Committee is concerned by high mortality rates among children, by high maternal mortality rates, by low investment in health care, the limited number of hospitals and health centres that are operational, the limited drug supply and relative cost of existing medicines including generic drugs and the concentration of medical professionals in Bujumbura city.

55. The Committee urges the State party to make significant increases in the health budget and to make every effort to improve public health, including primary health care and to ensure adequate access for all children to health services, with particular regard to rural communities and those living in camps. The Committee recommends that the State party implement integrated policies and programmes for the management of childhood illnesses and measures for child and maternal health improvement. The Committte recommends that the State party seek the assistance of UNICEF and WHO in this regard.

56. The Committee is concerned at the lack of a comprehensive policy regarding social welfare protection, and that social welfare protection is not equally accessible to the children of parents who are not employed in the civil service.

57. In light of article 26 of the Convention, the Committee recommends that the State party strengthen its efforts to extend social welfare protection to all sectors of the population, including through systems such as the health insurance card.

Adolescent health

58. The Committee is concerned at the lack of an adolescent health care policy, and particularly with regard to reproductive health, early teenage pregnancy, mental health and problems related to the inhaling of substances such as glue and petrol and the use of marijuana.

59. The committee recommends that the State party make additional efforts to develop a comprehensive adolescent health care policy including the provision of reproductive health education and of specialised health assistance for the treatment of mental, reproductive and other health concerns confronting adolescents. In this context, the Committee recommends that the State party seek assistance from UNICEF and WHO.

HIV/AIDS

60. The Committee is deeply concerned by the high incidence of HIV/AIDS in the State party and its impact either direct or indirect, on children and adolescents.

61. Noting the efforts made in this regard, including the national Programme to combat HIV/AIDS, the Committee recommends that the State party pursue and increase its current efforts to promote awareness and prevention of HIV/AIDS. The Committee recommends that the State party seek assistance in this regard from UNAIDS, UNICEF and WHO.

Psychological care

62. Noting the current efforts to address trauma, the Committee is concerned at the inadequacy of specialised psychological care in almost all regions of the State party

and the substantial need for such assistance among children who have suffered from, *inter alia*, the ongoing armed conflict, displacement, regroupment, sexual abuse and living conditions in camps. The Committee is concerned that the current ratio of mental health workers to the population is very low.

63. The Committee recommends that the State party increase its efforts to make psychological assistance avaliable to those children who have experienced trauma and to increase human resources in the area of psychological care by providing specialised mental health training for existing health professionals. The Committee urges the State party to seek assistance from UNICEF and WHO in this regard.

D7. Education, leisure and cultural activities (arts. 28, 29, 31)

Education

64. The Committee is very concerned by the dramatic fail in the numbers of children attending primary and secondary education in the State party, by the insufficient numbers of qualified teachers working in rural communities and in camps, by the lack of adequate teaching equipment and by repeated attacks of armed persons upon schools. The Committee is further concerned by the limited access of children with disabilities to formal or vocational education opportunities and by the proportionally reduced number of girls attending primary or secondary education.

65. The Committee urges the State party to continue and strengthen its efforts to, *inter alia*, rebuild and re-open schools, recruit qualified teachers in those areas where they are needed, make available adequate teaching equipment and to ensure that all children have equal access to education opportunities, including indigent and displaced children. The Committee further recommends that the State party develop a clear programme of action for increasing the access of children to formal education. The Committee recommends, in addition, that the State party ensure that children with disabilities have access to formal and vocational education opportunities and that every effort be made to ensure the equal access of girls and boys to education opportunities. In this regard, the Committee recommends that the State

party seek assistance from UNICEF and UNESCO.

66. The Committee recommends, in addition, that the State party pursue its efforts to include "education for peace", children's rights and other human rights subjects in the curricula of primary and secondary schools, and that assistance be requested from UNICEF and UNESCO ln this regard.

D8. Special protection measures (arts. 22, 38, 39, 40, 37 (b)-(d), 32-36)

Refugees and internally displaced children

67. The Committee is deeply concerned by the very high numbers of persons who have been displaced from their homes as refugees and internally within the country and by the situation of those displaced children who are unaccompanied. The Committee is, in particular, disturbed by the massive numbers of people who have been forcibly regrouped within the country and by the very poor, and sometimes life threatening, conditions within displaced and regrouped persons camps, and the poor access of camp populations to health and education services. The Committee notes that the State Party has given several public guarantees to end the regroupment practice, and which have not been adhered to. The Committee notes, further, that success in family tracing efforts, on behalf of unaccompanied children, has been limited.

68. The Committee urges the State party to make every effort to protect the civilian population from deplacement and to implement its plans to end regroupment, giving particular attention to the situation of unaccompanied children and the need for effective family tracing. The Committee further urges the State Party to ensure that all displaced children and their families, including those who have been regrouped, have access to essential health and education services and to consider the need for continued access to such services during the often slow process of return to communities of origin. The Committee urges the State party, further, to provide returning children and their families with assistance in re-establishing themselves in their homes. In addition the Committee urges the State Party to continue to work closely with the UNHCR towards establishing conditions conducive to the return of refugees in safety and in the context of durable solutions.

Children living and working on the street or in the hills

69. The Committee is concerned by the situation of children living and working on the streets and children living on their own and without proper housing in the countryside hills. The Committee is concerned, *inter alia* by the poor access of such children to health, education and other services, by reports that the numbers of children living or working on the streets is continuing to increase and by the particular vulnerability of girls in these situations.

70. The Committee recommends that the State party reinforce the current efforts on behalf of street and "hill" children and ensure that these children are protected and have access to health and education services. Taking into consideration the limited availability of social workers and the scarcity of resources, the Committee recommends that the State party give greater support to the work of NGOs in this domain and provide the police services with training on children's rights towards ensuring that the police contribute to the protection of children from acts of violence or other abuse while on the street. The Committee recommends that special attention be given to improving the situation of girls. The Committee recommends, further, that the State party seek assistance from UNICEF in this regard.

Children in armed conflict

71. The Committee is concerned by the participation of children in the State party's armed forces, either as soldiers or as helpers in camps or in the obtaining of information. The Committee is further concerned by reports of widespread recruitment of children by opposition armed forces. The Committee is concerned by reports of sexual exploitation of children by members of armed forces. The Committee is deeply concerned, further, by violations of international humanitarian law provisions related to the treatment of civilians in armed conflict.

72. The Committee urges the State party to end the use of children as soldiers or in any other way related to the armed conflict and to demand, in the context of peace negotiations, that opposition armed forces also cease to use children as soldiers. The Committee recommends that the State party ratify the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed

Conflicts at the earliest opportunity. In addition, the Committee urges the State party to ensure that acts of sexual exploitation of children by the armed forces are brought to an end and that perpetrators are prosecuted. The Committee recommends, further, that the State party provide demobilised children, and others who have been linked to armed forces or groups, with assistance towards their social reintegration. The Committee recommends that full respect of international humanitarian law provisions be guaranteed.

Juvenile justice

73. Noting the efforts made to appoint juvenile judges, the Committee is concerned at the weakness of juvenile justice facilities in the State party. In particular, the Committee is concerned that children who have been charged with a criminal offence are obliged to wait long periods of time before a trial is held. The duration of pre-trial detention of children frequently exceeds the maximum prison sentence for which a child could be sentenced if found guilty. Investigations into criminal accusations made against children are extremely slow. In addition, the Committee is concerned that children are usually detained or imprisoned in the same facilities as adults and that conditions of detention are very poor. The Committee is also concerned to learn that children under the established minimum age of criminal responsibility of 13 are frequently detained.

74. The Committee urges the State party to make every effort to ensure that investigations and trials of children accused of committing criminal acts are conducted rapidly, that periods of pre-trial detention be kept to a minimum, that children be detained or imprisoned separately from adults and that conditions of detention be improved. The Committee urges the State party to ensure that no children under the age of 13 are detained or imprisoned as required by domestic legislation. The Committee recommends that the State party make further efforts to ensure implementation and respect of the Convention, in particular articles 37, 40 and 39, and of other United Nations standards in the field of juvenile justice, including the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) and the United Nations

Rules for the Protection of Juveniles Deprived of their Liberty.

Sexual exploitation

75. The Committee is concerned that children have been the victims of sexual exploitation, sometimes by those persons who are responsible for their care.

76. The Committee recommends that the State party make every effort to end and prevent the sexual exploitation or abuse of children, giving particular attention to those children living in camps. The Committee recommends, in particular, that the State party develop and implement a multidisciplinary plan of action to address the sexual exploitation of children and encourages the State party, in its efforts to address commercial sexual exploitation, to take into account the recommendations formulated in the Agenda for Action adopted at the World Congress Against Commercial Exploitation of Children, held in Stockholm in 1996. The Committee also recommends that the State party consider ratification of the Optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.

Minorities

77. The Committee is deeply concerned by the poor situation of Batwa children and the lack of respect of almost all of their rights, including the rights to health care, to education, to survival and development, to a culture and to non-discrimination.

78. The Committee urges the State party to urgently gather additional information on the Batwa people, to strengthen the representation of Batwa in national policy making and to elaborate a plan of action to protect the rights of Batwa children, including those rights related to minority populations and indigenous peoples.

Dissemination of the report, written answers, concluding observations

79. Finally, in light of article 44, paragraph 6 of the Convention, the Committee recommends that the initial report and written replies submitted by the State party be made widely available to the public at large and that the publication of the report be considered, along with the relevant summary records and concluding observations adopted thereon by the Committee. Such a

document should be widely distributed in order to generate debate and awareness of the Convention, its implementation and monitoring within the Government, the Parliament and the general public, including concerned non-governmental organizations. The Committee recommends that the State party request international cooperation in this regard.

The World Organisation Against Torture (OMCT) wishes to extend its gratitude for its support to the Children's Programme to:

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